IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 34890 of 2007(C)

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PETITIONER:

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A.P.SKARIAH, EZHUTHUPALLI VEEDU,
VELLATHURUTHI KARA, KUZHIMATTOM P.O.,
KOTTAYAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.
KOTTAYAM, REPRESENTED BY ITS
EXECUTIVE OFFICER, KOTTAYAM.

2. EXECUTIVE OFFICER,
KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
KOTTAYAM.

3. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOTTAYAM.

4. BRANCH MANAGER,
KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
KANJIKUZHY.

BY STANDING COUNSEL SRI.SUNIL CYRIAC FOR R1 AND R2
GOVERNMENT PLEADER, SMT.ANU SIVARAM FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN, J.**

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W.P.(C) No. 34890 of 2007-C

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Dated this the 27th day of November, 2007

**J U D G M E N T**

Heard the learned counsel for the petitioner and the learned counsel for respondents 1, 2 and 4. Learned Government Pleader appears for the third respondent.

2. The petitioner availed a loan from the first respondent in 2002 agreeing to repay the same in 60 monthly instalments, by remitting monthly instalments of Rs.3,340/- plus interest on the 16th of every month. He committed default after remitting some amounts. This has led to Ext.P2 proceedings under the Securitisation Act against the security property, which was offered by another person for the benefit of the petitioner. The period the loan expired in January 2007. Ext.P2 was issued on 14/07/2007. On 24/07/2007 the petitioner made Ext.P3 representation to the thrid respondent Joint Registrar, who forwarded the same to the General Manager of the Bank, stating that by the 31st of that month the petitioner was proceeding to gulf country for employment. He,

thereafter, made Ext.P4 to the second respondent stating that there is chance of his getting employment in gulf and he, therefore, would repay the debts, if permitted to pay off in instalments.

3. The learned counsel for the bank submits that in terms of its transactions with NABARD, the non performing assets have to be liquidated and loans recovered in a time bound manner and, if the loan in question is not recovered by the end of the financial year 2007-08, the bank will be violating the terms of the NABARD, thereby inviting even blacklisting.

4. The nature of the transactions would show that the petitioner availed the loan and enjoyed it and had made certain repayments till January 2005. Inspite of the offer made in Exts. P3 and P4, apparently, no amounts have been paid after initiating Ext.P2 proceedings. The plea of the petitioner that SARFAESI Act does not apply to a co-operative bank decision, does not stand for the reason that it is a bank and the Act applies.

Having regard to the totality of the facts and circumstances, this writ petition is disposed of directing that if the petitioner remits an amount of Rs.20,000/- on or before the 5th December, 2007 and pays off the balance amount due as per Ext.P2 in equal instalments on the 5th of January, 5th of February, 5th of March 2008 and 23rd of March 2008, the impugned proceedings will be dropped. If there is default in remitting any of the instalments, the bank will be entitled to sell the properties. The bank can take possession, which will be constructive, to ensure sale proceedings, if the conditions imposed in this writ petition are not complied with.

**THOTTATHIL B.RADHAKRISHNAN,**
**Judge**

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